OLR Bill Analysis

sHB 6658

AN ACT CONCERNING EMPLOYER USE OF NONCOMPETE AGREEMENTS.

SUMMARY:

This bill generally codifies Connecticut common law by setting certain restrictions on employers' use of noncompete agreements or covenants. Such an agreement or covenant expressly prohibits the employee from engaging in certain employment or a line of business after termination of employment to protect the employer's reasonable competitive business interests. The bill applies to businesses with employees, the state, and its political subdivisions.

Under the bill, for an agreement or covenant to be valid:

1. as under common law, it must be reasonable in its duration, geographical scope, and the type of employment or line of business it prohibits; and

2. before entering into the agreement or covenant, the employer must provide the employee at least 10 business days, and more if reasonable, to seek legal advice relating to the agreement's or covenant's terms.

The bill allows a party aggrieved by a violation of its provisions to bring a civil action for damages, court costs, and reasonable attorney's fees. As under common law, if the court finds an agreement or covenant to be unreasonable in some aspect, the bill allows a court to limit the agreement or covenant to make it reasonable and enforce the limited agreement or covenant. In that situation, the court considers what would have been reasonable in light of the circumstances in which the agreement or covenant was made.

The bill applies to agreements and covenants made, renewed, or

extended on or after October 1, 2013.

The bill does not affect current statutory law regarding noncompete agreements or covenants for security guards and broadcast employees (see BACKGROUND).

EFFECTIVE DATE: October 1, 2013

BACKGROUND

Common Law Regarding Noncompete Agreements

A noncompete agreement or covenant is considered a restrictive covenant under common law (*Scott v. General Iron & Welding Co., Inc.* 171 Conn. 132 (1976)). The factors courts currently use to evaluate whether a particular restrictive employment covenant is reasonable are (1) the length of time the restriction operates, (2) the geographical area covered, (3) the fairness of the protection afforded the employer, (4) the extent of the restraint on the employee's opportunity to pursue his occupation, and (5) the extent of interference with the public interest. Under current court standards, a covenant must apply for a definite and reasonable time period and cover a geographical area that fairly protects both parties.

The case of *Gartner Group, Inc. v Mewes* (No. CV 91 0118332, Conn. Super. (January 3, 1992)) illustrates how courts deal with restrictive covenants. In the case, a one-year bar against competing anywhere the former employer does business was found to be unreasonable and unenforceable. The employee was the vice president of market development for a large, multinational information technology consulting firm headquartered in Connecticut. A separate provision applying the agreement only to the states of Connecticut, Massachusetts, and New York was found reasonable and enforceable.

Statutory Law Regarding Noncompete Agreements

Existing statutory law restricts the terms and enforcement of noncompete agreements for security guards and broadcast employees (CGS §§ 31-50a & b, respectively). Generally, an employer cannot restrict a security guard from working for another employer at the

same location through the use of a noncompete agreement unless the employer proves that the guard obtained the employer's trade secrets during his or her employment. And, generally, broadcast television and radio industry employers cannot:

1. restrict an employee's right to work for a certain period of time within a certain geographical area after his or her present employment contract expires;

2. require an employee to disclose any offers he or she receives for alternative employment after the present employment is terminated; or

3. require an employee to accept future or continuing employment with the employer on the same terms as an alternative offer for employment.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 44 Nay 0 (04/16/2013)